IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4012 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

HARISHCHANDRA J. GOSWAMI

Versus

DISTRICT COLLECTOR

Appearance:

MR YN OZA for the Petitioner-absent.

Mr. Sudhir Mehta, ASST. GOVERNMENT PLEADER for Respondent No. 1,5-6.

RULE SERVED for Respondent No. 2-4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/04/2002

ORAL JUDGEMENT

List has been revised. None appears on behalf of the petitioner, though with the assistance of the Assistant Government Pleader I have gone through the

entire case papers. Accordingly, this petition is being disposed of. This petition has been filed for quashing and setting aside the impugned order dated 5.6.1987 of the respondent no.1 at Annexure "A" to the petition whereby the Collector, Bharuch directed for the recovery of the amount of Rs. 5402/- from the petitioner. It is asserted in the petition that the petitioner was appointed as Talati in the Revenue Department in the year 1954. After bifurcation of the Bombay State, the services of the petitioner were transferred to Bharuch Taluka Panchayat and he continued to serve as Talati till the retirement on 31st December, 1986. He was on deputation. The petitioner attained the maximum pay scale of Rs.200/- basic since 1.10.1972. Thereafter, an entry was made to the effect in his service book by an order dated 28th February, 1973 passed by the District Development Officer, Bharuch. A minor penalty of stoppage of two increments with future effect was inflicted on the charge of irregularity in maintenance of accounts. It is asserted that that order of penalty had no effect as on 1.10.1972. The petitioner had alrelady attained maximum pay scale of Rs.200/- and the punishment order was dated 28th February, 1973 whereby penalty of stoppage of two increments was awarded. That penalty could not have been given effect retrospectively. As such, that order of punishment was ineffective and illegal. As such the audit note of Taluka Panchayat, Bharuch for the year 1972-73, as per remarks of para 74(2) of the said report, the auditor had pointed out to the Taluka Panchayat, Bharuch, that petitioner had already attained the maximum pay scale of Rs.200/-. It was futile to inflict a penalty of stoppage of two increments would have no effect unless the penalty is modified. Pursuant to the remarks made by the audit note for 1972-73, the Taluka Development Officer by a letter dated 11.12.1975 informed the Assistant Supervisor, Local Fund, Bharuch that to comply with the above two remarks as they were informed, the D.D.O. was required to take appropriate action. The copy of the audit note for the year 1972-73 and the letter dated 11.12.1975 sent by T.D.O., Bharuch have been placed on record as Annexure "B", but no action was taken by the concerned officer. Vide order dated 8.11.1985, as per the recommendation of the pay commission, he was given selection grade with effect from 1st July, 1979 and his name was shown at serial no. 5 on page no.4 of the said order. Thus, the petitioner was given selection grade of Rs. 350-500 for the post of Talati cum Mantri. Till the retirement of the petitioner in the year 1986, no action was taken regarding imposition of the penalty upon the petitioner. When the pension papers of the petitioner were

scrutinised by the office of the Accountant General, Ahmedabad, it was found that a minor penalty was imposed upon the petitioner in the year 1973, no action pursuant to that effect was taken by the respondents. Hence, the Accounts Officer of A.G. office, Ahmedabad sent a letetr dated 23rd October, 1986 to the Collector to clarify the above mistake. The Collector calculated the excess amount paid to the petitioner from 1.10.1973 to 31st December, 1986 and passed the order of recovery which has been challenged in this petition. Though it is stated that during pendency of the recovery of the proceedings, the entire amount of the petitioner being pension and gratuity was withheld by the respondents. But from the papers, it appears that the retiral benefits have already been released pursuant to the order of this Court.

2. The respondent Deputy Collector has filed affidavit-in-reply on behalf of the respondent nos. 1 and 5 and it is stated that the petitioner was appointed as Talati on 20.3.1952. The petitioner continued to work under the State of Gujarat in Revenue Department but upon implementation of Panchayat Raj system, the services of the petitioner were allotted to the District Panchayat vide order dated 29th March, 1963 passed by the respondent no.1 and the petitioner was transfered to Bharuch district and he started rendering his services to Bharuch District Panchayat with effect from 1.4.1963. The petitioner was deputed to work under respondentn o.1 with effect from 12th August, 1981 as City Talati, Bharuch on deputation and he retired on 31st December, 1986 on superannuation on completing 58 years. At the time when his service book and other relevant papers were sent to the Accountant General for calculating pension etc., it was found by the office of the Accountant General that by an order dated 28th February 1973, the respondent no. 2 had imposed a minor penalty upon the petitioner withholding of two increments with future effect. That order passed by the respondent no. 2 was not implemented and the petitioner was paid excess amount during the tenure of his service and the salary was paid to the petitioner. The order dated 28th February, 1973 was not implemented. It was found that an amount of Rs. 4502/- was paid in excess to the petitioner by the order dated 28th February, 1973. Appropriate orders for the purpose of recovery of that amount of Rs. 5402/- was passed by the respondent no. 4 on 8th May, 1987. The intimation of that order was sent to the respondent no.1 that the petitioner was working under subordination of respondent no.1 on deputation at the relevant time. The said information was also sent to the Accountant General.

Hence, the said amount was required to be adjusted against the amount payable to the petitioner towards his retiral dues.

3. The petitioner has challenged the order dated 5th June, 1987, but the original order dated 28th February, 1973 has not been challenged. That order of 1987 is a consequential order. That cannot be challenged in this petition. It is also stated that the selection grade given to the petitioner has no relevance with the stoppage of increments.

4. I have carefully considered the contentions of the learned Assistant Government Pleader and gone through the papers on record. It appears that some order imposing minor penalty of stoppage of two increments with future effect was passed by the District Development Officer vide order dated 28th February, 1973. As the petitioner had alrelady attained the maximum pay scale of Rs.200/- since 1.10.1972, the order dated 28th February, 1973 was ineffective as it was not given retrospective effect. In that respect, the audit note of Taluka Panchayat, Bharuch for the year 1972-73 was made and the auditor pointed out to the Taluka Panchayat, Bharuch that the petitioner had attained the maximum pay scale of Rs.200/-. It was futile to inflict the penalty of stoppage of two increments which could not have been implemented unless the penalty was modified. As the penalty was not modified, hence the order dated 28th February 1973 could not be implemented. Pursuant to the remarks of audit note for the year 1972-73, the Taluka Development Officer vide his letter dated 11.12.1975 informed the Assistant Supervisor, Local Funds, Bharuch to comply with the audit remarks and them also informed the District Development Officer to take appropriate action, but no action has ever been initiated by the District Development Officer, Bharuch pursuant to the letter dated 11.12.1975 sent by the Taluka Development Officer, Bharuch. As such, the order dated 28th February, 1973 was infructuous and without complying with the order dated 11.12.1975 and the audit note for the year 1972-73, the department is making an attempt to recover an amount of penalty after a period of about 13 years. If some illegal order has already been passed or if the order has been passed which cannot be effected or operated, then that order cannot be given the effect after a period of about 14 years. It will be presumed that some illegal order has been passed and for the correction or modification of that order, proceedings were not initiated and the petitioner was not informed. The illegal order will not be implemented after 14 years.

As such, the petitioner cannot be deprived of his right without following the principles of natural justice. Secondly, if any person has already attained the maximum pay scale, the order for withholding of two increments cannot be implemented unless that order is made with retrospective effect and it is not stated by the respondents in the affidavit-in-reply that the order dated 28th February, 1973 was made with retrospective effect. In case that order was not made with retrospective effect, that order cannot be implemented with as prospective effect as the petitioner had already attained the maximum pay scale of Rs. 200/- prior to the order on 1.10.1972 prior to the order of punishment dated 28th February, 1973. Considering the contentions of the learned advocates for the parties, interim relief was directed to continue and it was further directed that the post retiral benefits available to the petitioner be released at the earliest subject to the result of this petition and the petitioner was also directed to file an undertaking in this Court within two weeks from the date of the order to the effect that he will repay such amount as directed by this Court. It appears that at the relevant time, when the order for the release of retiral benefits was passed by this Court, an undertaking was required to be filed by the petitioner. As such, it appears that the retiral benefits have already been given to the petitioner subject to the final outcome of this petition.

5. In the facts and circumstances of the case, I think that the order dated 28th February 1973 withholding of two increments with future effect could not have been implemented as the petitioner had already obtained maximum pay scale of Rs. 200/- prior to the order dated 28th February, 1973. In that respect, necessary modification was required and the audit note was made, but nothing was complied with. Hence, that order cannot be implemented after a period of 14 years when the petitioner has already retired.

6. In view of the above discussion, this petition is allowed. The order dated 5th June, 1987 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

...

***darji